

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
**April 11, 2017**

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Keawe at 9:10 a.m., at the Lihu‘e Civic Center, Mo‘ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Kimo Keawe  
Ms. Kanoe Ahuna  
Ms. Donna Apisa  
Mr. Roy Ho  
Mr. Wade Lord  
Mr. Sean Mahoney  
Ms. Glenda Nogami Streufert

The following staff members were present: Planning Department – Michael Dahilig, Chance Bukoski, Jody Galinato, Leslie Takasaki, Alex Wong; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Prior to the start of the meeting, Council Administrative Assistant Eddie Topenio gave the Oath of Office to new Commission Member Wade Lord.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Keawe called the meeting to order at 9:10 a.m.

**ROLL CALL**

Planning Director Michael Dahilig: Commissioner Apisa.

Ms. Apisa: Present.

Mr. Dahilig: Commissioner Streufert.

Ms. Nogami Streufert: Present.

Mr. Dahilig: Vice Chair Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Lord.

Mr. Lord: Here.

Mr. Dahilig: Chair Keawe.

Chair Keawe: Here.

Mr. Dahilig: Mr. Chair, you have seven (7) members present this morning.

Chair Keawe: Thank you.

### **APPROVAL OF AGENDA**

Chair Keawe: Approval of the agenda.

Mr. Dahilig: Mr. Chair, the Department would recommend moving Item K.1. after Item H in this morning's agenda and taking the agenda in order afterwards.

Chair Keawe: Do I have a motion to approve the adjusted agenda?

Mr. Mahoney: Chair, move to approve amended agenda.

Chair Keawe: Do I have a second?

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

### **MINUTES of the meeting(s) of the Planning Commission**

#### **Regular Meeting of March 14, 2017**

Mr. Dahilig: Thank you, Mr. Chair. We do have minutes for the Commission's approval. These are the regular meeting minutes of March 14, 2017.

Mr. Mahoney: Chair, move to approve the minutes of March 14, 2017.

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded to approve the minutes of March 14<sup>th</sup>. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

## **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: Thank you, Mr. Chair. We do not have any additional items for receipt this morning.

## **HEARINGS AND PUBLIC COMMENT**

Continued Agency Hearing (NONE)

New Agency Hearing

Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 to deviate from the minimum lot size requirement within the Agriculture (A) zoning district, pursuant to Section 8-8-3(b) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the makai side of Kūhiō Highway in Kīlauea, approx. 600 ft. north of the Waiakalua Street/Kūhiō Highway intersection and further identified as Tax Map Key (4) 5-1-005:132, and affecting a total area of 27,450 sq. ft. = *Brian Lansing & David Camp*. [Director's Report received 3/28/17.]

Mr. Dahilig: Item F is Hearings and Public Comment. This is...on Item F.2., New Agency Hearing, Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 to deviate from the minimum lot size requirement within the Agriculture zoning district, pursuant to Section 8-8-3(b) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the makai side of Kūhiō Highway in Kīlauea, approximately 600 feet north of the Waiakalua Street/Kūhiō Highway intersection and further identified as Tax Map Key (4) 5-1-005 Parcel 132, and affecting a total area of 27,450 square feet. The applicants are Brian Lansing and David Camp. There's a Director's Report received 3/28/17 and a Supplement Director's Report No. 1 for this morning, Mr. Chair.

The Department would recommend opening the new agency hearing at this time.

Chair Keawe: We will open the hearing at this time.

Mr. Dahilig: Mr. Chair, I do not have any individuals signed up to testify for this agency hearing. Given the lack of those signed up to testify, the Department would recommend making a final call for any final testifiers and close the agency hearing.

Chair Keawe: Final call for testifiers on this particular item. Sir.

Brian Lansing: Brian Lansing.

Mr. Dahilig: Sir, as you're an applicant, you'll have an opportunity—

Chair Keawe: You'll have an opportunity later.

Mr. Lansing: Okay.

Chair Keawe: Anybody else on this particular item? If not, we'll close the hearing. Do I have a motion to close the hearing?

Mr. Mahoney: Chair, move to close the agency hearing.

Ms. Apisa: Second.

Chair Keawe: It's been moved and seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

Class IV Zoning Permit Z-IV-2017-7 and Variance Permit V-2017-3 to deviate from the lot length requirement within the Residential (R-4) zoning district, pursuant to Section 8-4.4(a)(3) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the southern side of Kūhiō Highway in Hanamā'ulu Town, approx. 350 ft. west of the Laukona Street/Kūhiō Highway intersection and immediately adjacent to property identified as 4485 Laukona Street/Kūhiō Highway intersection and immediately adjacent to property identified as 4485 Laukona Street, Tax Map Key (4) 3-7-006:097, and affecting a total area of 82,880 sq. ft. = Neil B. and Desiree A. Fagarang. [Director's Report received 3/28/17.]

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.2.b. This is Class IV Zoning Permit Z-IV-2017-7 and Variance Permit V-2017-3 to deviate from the lot length requirement within the Residential R-4 zoning district, pursuant to Section 8-4.4(a)(3) of the Kaua'i County Code (1987) as amended, involving a parcel situated along the southern side of Kūhiō Highway in Hanamā'ulu Town, approximately 350 feet west of the Laukona/Kūhiō Highway intersection and immediately adjacent to the property identified as 4485 Laukona Street at TMK: (4) 3-7-006 Parcel 097, and affecting a total area of 82,880 square feet. The applicant is Neil B. and Desiree A. Fagarang. There's a Director's Report received 3/28/17 for this matter.

Mr. Chair, the Department would recommend opening the agency hearing at this time.

Chair Keawe: We will open the agency hearing on this item at this time.

Mr. Dahilig: Mr. Chair, I do not have any individuals signed up to testify for this agency hearing. The Department would make a recommendation to make a final call for any final testifiers and close the agency hearing.

Chair Keawe: This is a final call on this item; the Fagarang item. If not, I'll entertain a motion to close the hearing.

Ms. Apisa: Motion to close the hearing.

Chair Keawe: Second?

Mr. Mahoney: Second.

Chair Keawe: It's been moved and seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

Special Management Area Use Permit SMA(U)-2017-1, Class IV Zoning Permit Z-IV-2017-8, and Use Permit U-2017-6 for construction of a farm dwelling unit and guest cottage within the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated at the terminus of Pali Moana Place and immediately adjacent to property identified as 4101 Pali Moana Place, Tax Map Key (4) 5-2-004:095, and containing a total area of 5.476 acres = Nicholas F. Marvin Trust. [Director's Report received 3/28/17.]

Mr. Dahilig: Thank you, Mr. Chair. We are on Item F.2.c. This is Special Management Area Use Permit SMA(U)-2017-1, Class IV Zoning Permit Z-IV-2017-8, and Use Permit U-2017-6 for construction of a farm dwelling unit and guest cottage within the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated at the terminus of Pali Moana Place and immediately adjacent to the property identified as 4101 Pali Moana Place, Tax Map Key (4) 5-2-004 Parcel 095, and containing a total area of 5.476 acres. The applicant is Nicholas F. Marvin Trust. There's a Director's Report received 3/28/17.

Mr. Chair, the Department would recommend opening the agency hearing at this time.

Chair Keawe: We will open up the agency hearing for this item at this time.

Mr. Dahilig: Mr. Chair, given the absence of anybody signed up to testify on this item, the Department would recommend making a final call for any testifiers and close the agency hearing.

Chair Keawe: Any testifiers on this item? If not, I'll entertain a motion to close.

Ms. Apisa: I'll make a motion to close this hearing.

Chair Keawe: Do I have a second?

Ms. Nogami Streufert: Second.

Chair Keawe: It's been moved and seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

## Continued Public Hearing

## New Public Hearing

Mr. Dahilig: Thank you, Mr. Chair. We do not have any continued public hearings or any new public hearings.

## All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: And we are at an opportunity for anybody that would like to testify on any other agenda item for this morning. I do not have any additional testifiers signed up for any other agenda item, Mr. Chair. I would make a recommendation to see if the crowd would like to testify on any other further item.

Chair Keawe: Okay. This is a call for any item under the Sunshine Law at this time. If not...

## CONSENT CALENDAR

### Status Reports

#### Director's Report(s) for Project(s) Scheduled for Agency Hearing on 4/25/17

Class IV Zoning Permit Z-IV-2017-9, Use Permit U-2017-7 and Special Permit SP-2017-3 to allow construction of a new control building, replacement of an existing well pump, and associated site improvements involving a parcel situated on the eastern side of Wailaau Road in Kōloa, approx. ½-mile of its intersection with Maluhia Road, further identified as Tax Map Key (4) 2-8-002:001, and affecting a portion of a larger parcel approx. 314+ acres in size = County of Kaua'i, Department of Water.

Mr. Dahilig: Thank you, Mr. Chair. Item G, Consent Calendar. We have no status reports. We do have one (1) Director's Report for setting and scheduling for 4/25/17. This is Class IV Zoning Permit Z-IV-2017-9, Use Permit U-2017-7 and Special Permit SP-2017-3 at TMK: (4) 2-8-002 Parcel 001, affecting a portion of a larger parcel approximately 314 acres in size. This is the County of Kaua'i, Department of Water. Other than that, that's all we have for the Consent Calendar this morning, Mr. Chair.

Chair Keawe: I'll entertain a motion to receive.

Ms. Apisa: I'll make a motion to receive.

Chair Keawe: Is there a second?

Mr. Mahoney: Second.

Chair Keawe: It's been moved and seconded. All those in favor? (Unanimous voice vote) Motion carries 7:0. Thank you.

## **COMMITTEE REPORTS**

### **Subdivision**

Mr. Dahilig: Mr. Chair, we are distributing the Subdivision Report for this morning's Subdivision Committee meeting, and would recommend entertaining this item at this time per the amended agenda.

Chair Keawe: Okay. Chair Ho, can you give us the report?

Mr. Ho: Three (3) items for consideration this morning: George Tsukamoto-approved; A & B Properties with an amendment-approved; State of Hawai'i, Hawaiian Homelands-approved. That's our meeting.

Chair Keawe: Any questions about any of the items in the Subdivision Committee? If not, I'll entertain a motion to approve.

Ms. Apisa: I make a motion to approve the Subdivision Committee.

Chair Keawe: Do I have a second?

Mr. Ho: Second.

Chair Keawe: It's been moved and seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

## **GENERAL BUSINESS MATTERS**

### **In re the Application of *Princeville Hanalei Plantation, LLC*, Shoreline Setback Application and Determination SSD-2017-33.**

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item I.1. This is General Business Matters in regards to the application of Princeville Hanalei Plantation, LLC Shoreline Setback Application and Determination SSD-2017-33. Item I.1.a. This is a letter from Harold Bronstein, Esq., dated 4/4/17 requesting the Planning Commission: enter an order staying the Planning Director's decision in SSD-2017-33; take all action necessary for the Planning Commission to promulgate the rules and regulations necessary to create an appellate procedure for appeals from the Planning Director's decisions and/or other actions pursuant to 8-27.14; enter an order requiring the Applicant to obtain a certified shoreline prior to any attempt to determine the shoreline setback line; four, enter an order reversing the Planning Director's decision of March 1, 2017 determining that the Applicant pursuant to 8-27.3 is "exempt" from those shoreline setback

determination requirements of 8-27.8; and seek [sic] other action the Planning Commission deems appropriate at this time. There is also an item that has been posted for setting date of hearing and deadlines.

Mr. Chair, we are referring this matter to the Planning Commission for its action. I would suggest, at this time, given that my decision is being appealed, that I step away from the bench and leave this up to the attorney to help guide the Commission on this item.

Chair Keawe: Go ahead, Jodi.

Deputy County Attorney Jodi Higuchi Sayegusa: Okay. So there are several items before you that's been forwarded to you folks. You have several options at this point. I think, at this point, it's more of a procedural scheduling, so you have the choice of whether or not to take the matter up and hear the contested case and all the matters that were submitted to you on the agenda, we could...on the other hand, you do have the option to, like the other contested cases that we've received recently, to refer it to the Hearings Officer. But, again, under the rules, you do have the authority...basically like original, sort of, jurisdiction, I would say. You ultimately do make the decision based on the evidence that is entered into the record, similar to...so whether it's through the Hearings Officer going through all the evidentiary hearings. You also could go through the process yourself, which is to schedule a hearing, hear motions, the Chair will be acting as sort of like the presiding officer similar to a Hearings Officer, but ultimately, each of the meetings...we could also schedule special meetings for you folks to hear evidence and engage in that contested case process. So those are the options you have at this point.

Chair Keawe: Okay. Well, I guess from my perspective, most of us are fairly new on this Commission and this particular project has a long history. I think we need, I think from a commission standpoint, a little bit more time to review this particular project and all the nuances that surround it. I would, at this point, make a suggestion – and we can discuss it – that maybe we defer this to the next meeting on...I think it's the 25<sup>th</sup>. However, I would like to see briefs from each of the attorneys representing the parties in this particular case and I'd like to see those briefs in a week so that we have, as far as the Commission is concerned, the ability to review, yeah I think, a little bit more in depth what the issues are. So I'll throw that out to the Commissioners for discussion.

Ms. Ahuna: I'm in agreement. I would like to defer because I need to understand this case a little bit better and I want to hear, also, from community as well.

Ms. Apisa: Sounds good.

Chair Keawe: Alright. Can I hear the parties' positions now? Just as an informational issue. Could you state your name, please?

Harold Bronstein: Sure. Mr. Chairman and members of the Commission, my name is Harold Bronstein. It's my Notice of Appeal that you're looking at. Mr. Max Graham and his co-counsel, or whoever, is to my left. I appreciate what the Chairperson said though I think in one (1) week is pretty difficult for me, individually, to do and if you are going to go that route, I



would suggest it's two (2) meetings from now and that you extend the time to file "briefs" that you're talking about.

But I think there's a more important issue that's not being discussed because the recommendation that I want to see you take is to stay these proceedings, get your briefs, that's fine, but also, you need to amend your rules. There are no rules for this procedure. If you've read what I've written, attached as Exhibit, I believe, C, or maybe it's B, is the Planning Director's letter acknowledging Mr. Imparato who was here on March 14<sup>th</sup> to testify against this proceeding or against the Director's decision. There's just no procedure here. The County Attorney advised Mr. Dahilig to accept the appeal and proceed under Chapter 9. Chapter 9 talks about an applicant, not an appellant. The rules need to be changed. There are people out here...because when I opened up the rules, the first thing I did when someone asked me about this is go to your Policies and Procedures.

Ms. Higuchi Sayegusa: Sorry, I...sorry to interrupt. I just wanted to give...I suggested to the Chair that, you know, all the parties have an opportunity to respond on the timeline on briefs and the deferral, you know, but I didn't want it to open up argument on the substance of the matter at this point. It's just more procedural.

Mr. Bronstein: That's not argument. Are you telling me that there are rules? Are they (inaudible)?

Ms. Higuchi Sayegusa: I think, at this point, we're just...the Commission, at this point, is just considering the scheduling at this point, and the procedural aspects of--

Mr. Bronstein: Scheduling the briefs on the deferral.

Ms. Higuchi Sayegusa: Deferral and the briefs.

Mr. Bronstein: Then I'm asking that it be at least thirty (30) days because it can't be done by next week by me.

Chair Keawe: Okay, thank you.

Mr. Bronstein: Thank you.

Chair Keawe: Mr. Graham.

Max Graham: Good morning. I'm Max Graham and my co-counsel is Douglas Ing, and we are representing Princeville Hanalei Development [sic], LLC. We have no objection if you want to defer this for two (2) meetings and then give us time to present a brief. I'd say at least...give us three (3) weeks and then you'll have a week to read it and go over it before the meeting.

Chair Keawe: Any questions?

Ms. Nogami Streufert: From my reading of this, it seems that there are at least two (2) issues that are involved in it. And the two (2) issues...one (1) issue is about the Hanalei Plantation and the setback, and the other one is about the process whereby one can actually contest whatever the findings are. It appears that those are two (2) separate issues. They should be taken up separately rather than put together into one thing that seems to confuse everything because granted one is dependent upon the other; however, the defendant, if you will, or the opponent for each one of these is a very different person, or different entity. One is the community with Hanalei Plantation and the other one is Mr. Bronstein and the community with the process that we have in the Planning Department and the Planning Commission. If we can separate those two (2) out as we look at it, it might be easier to look at the issues before we put them together again.

Ms. Higuchi Sayegusa: I think that sort of goes to the arguments that are contained in the petition that was submitted before you folks. It's sort of the substantive issues.

Ms. Nogami Streufert: Right. Yes.

Ms. Higuchi Sayegusa: So at this point, we're just discussing the deferral to the next meeting or the following meeting, and then just kind of getting the parties' position on whether it's doable, if there's any objection to the scheduling at this point. But those issues that you're highlighting, yeah, that's actually something that we're going to have to go forward and actually analyze as we go through the contested case process. Those are the arguments that are contained in the substance itself.

Ms. Nogami Streufert: You're absolutely correct.

Ms. Higuchi Sayegusa: Yeah.

Ms. Nogami Streufert: But that's what I'm getting at. They are intertwined, but they are separate issues, and the respondent to these issues are different persons. So when it is about the process of contesting it, the entity that would be responding to that is different than the community with the Hanalei Plantation.

Ms. Higuchi Sayegusa: Okay.

Ms. Nogami Streufert: Because there's one about the setback and whether that's been identified and whether there's any breach of that versus what's the process, and I think they have to...we might want to separate those two out when we look at the briefs.

Chair Keawe: But ultimately, they both address the setback.

Ms. Nogami Streufert: That's correct.

Chair Keawe: Right?

Ms. Nogami Streufert: Yes, that is correct.

Chair Keawe: And that's what we have before us is the issue of the setback as opposed to...because both of those combined will address the setback.

Ms. Nogami Streufert: Yes, but there is a broader issue involved when you're talking about the process.

Chair Keawe: I understand. Okay. Any other comments?

Mr. Mahoney: Chair, if both parties are agreeable to postponing this deferral to at least a second meeting and if the point is about scheduling right now, I would be willing to make a motion to defer this to the second meeting, if that's (inaudible).

Ms. Higuchi Sayegusa: Oh, before that, maybe it's best –

Mr. Mahoney: Not as a motion now, but if it's up for discussion.

Ms. Higuchi Sayegusa: Okay.

Chair Keawe: Yeah, okay. We're still discussing, you know, when. So, Mr. Graham, do you have anything further?

Mr. Graham: There is a third party; it's the Planning Department. And Mr. Roversi needs to speak, also, as to his position. I just wanted to clarify, the applicant is Princeville Hanalei Plantation, LLC. I think I might have misspoke previously.

Chair Keawe: Okay. Alright. Can we hear from the other attorney, please?

Adam Roversi: Good morning, Mr. Chair and members of the Commission. Adam Roversi representing the Planning Department. The Planning Department has no objection to continuing this out a month or two (2) months. I would concur that there are...if, in connection with setting your schedule, you are going to be considering ordering briefs of some sort, I would concur with the comments that were just made that there are two (2) distinct issues and it may be helpful to deal with them distinctly. And I think that it would be easier for all the parties – this is the Department's position – to provide you an initial brief on the procedural issue, which would then clear the way for you to move forward on the substance, and then set a briefing for the substance of the matter a bit further out. That would be the Department's recommendation.

Chair Keawe: Commissioners, is that...?

Ms. Nogami Streufert: I agree with that.

Chair Keawe: Okay.

Ms. Ahuna: Yes.

Chair Keawe: Alright. We all agree on that. Thank you. Okay. That's it. (Laughter) Alright. So, at this point, it's a question of when we set this next hearing and when we would like the briefs to be due. I think we've heard three (3) weeks to a month for briefs. Can we expect them, maybe, in three (3) weeks? Mr. Bronstein, you think you can do it in three (3) weeks?

Mr. Bronstein: Yes, sir.

Chair Keawe: Okay. So now it's a question of the meeting. Jodi, can you...?

Ms. Higuchi Sayegusa: Yeah, let's see. Let me pull up my calendar.

Ms. Nogami Streufert: Mr. Chair?

Chair Keawe: Yes, ma'am.

Ms. Nogami Streufert: If I could ask a question.

Chair Keawe: Yes.

Ms. Nogami Streufert: Since there are two (2) separate issues, are we expecting two (2) separate briefs? A brief that would specify...or, that would look at one issue separately from the other so that Mr. Bronstein would have to be doing two (2) briefs as opposed to...because there are two (2) issues for him versus the Planning Department with one (1) brief...or, two (2) briefs. In other words...and do we do this at the same time or can we do this at a separate meeting, so that we can get one issue clarified before we go to the next one.

Chair Keawe: Mr. Bronstein, do you have something further to add?

Mr. Bronstein: When I said "yes, sir" to you—

Ms. Higuchi Sayegusa: Sir, could you—

Chair Keawe: Could you speak in the mic, please?

Mr. Bronstein: When I said "yes, sir", it was my understanding, based on what I heard and I think I have an agreement with Mr. Graham, that three (3) weeks from today, which takes us to May 2<sup>nd</sup>, on procedure and schedule the meeting on the 9<sup>th</sup> to discuss that, and then go forward with the subsequent brief that...I'm sorry, I don't know the Commissioner's name.

Chair Keawe: Commissioner Streufert.

Ms. Nogami Streufert: Nogami Streufert.

Mr. Bronstein: Thank you. I apologize.

Ms. Nogami Streufert: It's alright.

Mr. Bronstein: And go from there, and that's what I'm hearing. When I said "yes, sir" that's what was going on in my head and what I'm agreeing to.

Chair Keawe: Yeah. I think our concern is more scheduling for the Commissioners and their schedule.

Mr. Bronstein: Well, these are regular meetings; the regular meeting, you know.

Chair Keawe: Right.

Mr. Bronstein: (Inaudible)

Chair Keawe: Okay. So, then, let's go ahead and schedule the briefs on the 9<sup>th</sup> and the other on the 23<sup>rd</sup>. Those are the next two (2) regular meetings. Is that agreeable to all the parties? Can we have it on the record, please?

Mr. Roversi: Adam Roversi for the Planning Commission [sic]. So to clarify, is that a meeting on the 9<sup>th</sup> or the briefs due to the Commission on the 9<sup>th</sup>?

Chair Keawe: Briefs on the 9<sup>th</sup>.

Mr. Roversi: Okay. And the meeting regarding those briefs?

Chair Keawe: On the 23<sup>rd</sup>.

Mr. Roversi: 23<sup>rd</sup>. And the brief will...as we've discussed, will be on the procedural matter; whether the rules are sufficient to move forward at all to consider the substance?

Chair Keawe: Right.

Mr. Roversi: In that case, the County is fine with that schedule.

Chair Keawe: Yeah. Mr. Graham.

Mr. Graham: Its April 11<sup>th</sup> today. You want the briefs on May 9<sup>th</sup> and then we consider the matter on the following...so that's your next Planning Commission meeting, and then we consider the matter on the following meeting date. My suggestion is that you give us...unless you are going to start reading the briefs right away, give us another extra week, so it would be May 16<sup>th</sup> to submit the –

Chair Keawe: May 16<sup>th</sup> to receive the briefs?

Mr. Graham: Yes.

Ms. Higuchi Sayegusa: So, I'm sorry, just to clarify, so your folks' reply would be on the 16<sup>th</sup> is what you're asking? So the...

Mr. Graham: Well, we're not talking about actually...

Ms. Higuchi Sayegusa: Yeah. The briefs.

Mr. Graham: I haven't heard us talking about reply briefs.

Ms. Higuchi Sayegusa: I'm sorry.

Mr. Graham: That everyone gets in their argument on May 16<sup>th</sup>.

Ms. Higuchi Sayegusa: Okay.

Chair Keawe: Right.

Ms. Higuchi Sayegusa: Okay.

Ms. Apisa: That's a hearing date, or commission meeting date. So are we going to get it the week before? Or defer it for two (2) weeks after that?

Chair Keawe: Well, we're discussing when to get the briefs. Initially it was the 9<sup>th</sup>, which was the next meeting, and I think the parties are suggesting a little bit more so that would be the 16<sup>th</sup>. We don't have a meeting scheduled, but the briefs should be submitted at that time.

Ms. Apisa: Yeah, that's what I'm saying, and then it would be heard at the June 13<sup>th</sup>—

Ms. Ahuna: Then we have one week to review.

Chair Keawe: Yeah, then we only have a week to read it and study it, so...

Ms. Apisa: No, 23<sup>rd</sup> is the day they'd turn in the briefs and that's the date of our meeting.

Ms. Higuchi Sayegusa: No, no.

Chair Keawe: No, no.

Mr. Mahoney: No, the 16<sup>th</sup>.

Chair Keawe: The original schedule was the 9<sup>th</sup> they would turn in the briefs, that'll give us a couple weeks to read it or get familiar with it. And then—

Ms. Apisa: So they're going to turn it in on the 16<sup>th</sup>.

Chair Keawe: And the suggestion from one of the parties is to move it to the 16<sup>th</sup>.

Ms. Apisa: Okay.

Chair Keawe: But then we're back to...we just have a week to go through it. Now, it's up to you; if you feel comfortable. The whole idea of this delay is so that all of us can get up to speed on all of the issues of this particular application, and we want to make sure that you feel comfortable that you have the points that are necessary to hear it and make a decision.

Mr. Graham: Just to make it easy on everyone, let's just say that we'll get the briefs in on May 9<sup>th</sup>, then you'll have two (2) weeks to review everything.

Chair Keawe: Yeah. Thank you, Mr. Graham. Alright. So, that is the issue before us for this particular Princeville Hanalei Plantation, LLC issue, so do I hear a motion based on what the parties have agreed to?

Mr. Mahoney: Chair, I'd like to make a motion to receive the briefs by the 9<sup>th</sup> and defer to the 23<sup>rd</sup>. Does that encompass what (inaudible)?

Ms. Nogami Streufert: And these would be briefs on both the procedure as well as the contested—

Ms. Ahuna: No, just the procedure.

Ms. Higuchi Sayegusa: No, I think the clarification received previous was just procedure as you suggested.

Chair Keawe: Yeah.

Ms. Nogami Streufert: Okay. Got it.

Chair Keawe: We need that first.

Ms. Nogami Streufert: Thank you. I second.

Chair Keawe: Okay. It's been moved and seconded. Any discussion on this motion? Does everyone understand what we're doing? Okay, call for the question. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0. Thank you.

Mr. Graham: Thank you very much.

Ms. Nogami Streufert: Mr. Chair, do we also have to set a timeframe for when we will have the brief on the actual setback issue? Or do we not do that?

Ms. Higuchi Sayegusa: No, I think—

Chair Keawe: I think...go ahead.

Ms. Higuchi Sayegusa: Go ahead, sorry. I apologize. I think, at this point, it's more of just, again, trying to figure out the next step, which is you also have to decide whether you're going to hear the contested case or not.

Ms. Nogami Streufert: Okay. Got it.

Chair Keawe: Okay. Mr. Dahilig, where are we?

### **UNFINISHED BUSINESS (For Action)**

Special Permit SP-2016-4 to operate a transient vacation rental in Kīlauea, located on Kauapea Road, approx. 1,300 ft. from the Kauapea Road and Kīlauea Road intersection, identified as Tax Map Key 5-2-004:064, and affecting a portion of 7.418 acres = *Lee Unkrich and Laura Century Family Trust*. [Director's Report, Recommended Findings of Fact, Conclusions of Law, and Decision and order received; hearing deferred 6/28/16, deferred 9/27/16, deferred 1/24/17.]

Mr. Dahilig: We are on Item L, Mr. Chair. This is Item L.1., Special Permit SP-2016-4 to operate a transient vacation rental in Kīlauea, located on Kauapea Road approximately 1,300 feet from the Kauapea Road and Kīlauea Road intersection identified as Tax Map Key 5-2-004 Parcel 064 and affecting a portion 7.418 acres. The applicant is Lee Unkrich and Laura Century Family Trust. There was a Director's Report and recommended Findings of Fact, Conclusions of Law, and Decision and Order received, with the hearings deferred from 6/28/16, deferred 9/27/16, and deferred 1/24/17.

Mr. Chair, you do have before you an Item L.1.a., a stipulation to continue these proceedings both from Terence O'Toole and Laurel Loo, Attorneys for Dolphin House Estates dated April 11, 2017. Just for the record, my counsel is here, but we also do not have any objections to this request from them to continue deferring this matter.

Chair Keawe: Okay. Does everybody understand what we're doing?

Ms. Nogami Streufert: Do we have a reason for the deferral?

Mr. Dahilig: A lot of what is being discussed is actually an intervention question at this point. What happened at the Planning Commission was a request by a party to intervene and they are working out various solutions to whether to move forward with the contested case hearing or not. So in an attempt to try and avoid a contested case...full-blown contested case hearing, they are still trying to talk together and we are aware of what subject matter... I'd rather not talk about some of the minors on the floor, but there are solutions that are being floated around as ways to avoid a contested case hearing.

Chair Keawe: Okay. Do we have...are we ready? Yes. Go ahead.



Ms. Nogami Streufert: I move to defer the Special Permit SP-2016-4 to operate a transient vacation rental in Kīlauea, Tax Map Key 5-2-004:064, Lee Unkrich and Laura Century Family Trust to the next...do we want to make it to the next meeting, or...?

Chair Keawe: I think they are going to be discussing the deferral and work it out amongst themselves. Is that correct, Mr. Hempey? I just want to make sure we get this right.

Mr. Hempey: Yes. We were just whispering about dates.

Chair Keawe: Okay. Alright.

Ms. Nogami Streufert: So do we have a date to which we will defer this? Or are we leaving this an open-ended deferral?

Mr. Dahilig: I think we're comfortable until date set. I don't...you know, I think we've gone through this exercise three (3) times, I believe.

Ms. Nogami Streufert: Yes.

Chair Keawe: Yeah.

Mr. Dahilig: So it probably is just appropriate that we just do it until date set.

Ms. Nogami Streufert: Until date set.

Chair Keawe: Okay. Alright. Do we have a second?

Mr. Mahoney: I'll second.

Chair Keawe: Okay. Any discussion on this motion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

Zoning Amendment ZA-2017-4 : A bill for an ordinance amending Chapter 8 of the Kaua'i County Code (1987), as amended, to establish a zoning designation appropriate for any parcel encompassing a university or college campus = *County of Kaua'i*. [Director's Report and Supplemental No. 1 to Director's Report received, hearing closed 3/28/17.]

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item L.2. This is Zoning Amendment ZA-2017-4: a bill for an ordinance amending Chapter 8 of the Kaua'i County Code, as amended, to establish a zoning designation appropriate for any parcel encompassing a university or college campus. The applicant was this department. We deferred this at our request at the last meeting, notwithstanding a gracious motion on the floor, but we do have some amendments that I think will provide some support for this.

Chair Keawe: Okay. Alex, we're going through this again, but... And I see, by what you've submitted, there's some really good changes to this, so go ahead.

Staff Planner Alex Wong: Mahalo, Mr. Chair. Aloha mai kākou. I'd like to continue with the preliminary evaluation for Zoning Amendment ZA-2017-4.

Mr. Wong read Supplemental No. 2 to the Director's Report for the record (on file with the Planning Department).

Mr. Wong: If you read the following, in bullet point form, it basically details all of the changes that were made to the original draft that was posted prior to last Planning Commission meeting. If you have any questions or you'd like me to go over any of these details, I'd be happy to right now. If not, I would move onto the preliminary conclusion and continue from there.

Chair Keawe: Anybody have any further questions on this item? I think we...oh, go ahead, Glenda.

Ms. Nogami Streufert: I'm sorry. I have a few questions on this one. The Department of Homeland Security has guidelines for setbacks for safety for schools, as well as any public buildings. Has that been considered in this? Because I see a setback of 10...at one point its 10 feet and I don't think that's enough, 100 feet seems significant, but I'm not sure whether that was incorporated in here since there are...you know, we haven't had any – thank goodness – on Kaua'i, and I hope we never do, but there are these setback rules for the safety of the students and the faculty.

Mr. Wong: The numbers that were put for the setbacks in this draft ordinance were lifted directly from our other existing articles in our CZO; specifically from Commercial and Industrial districts that also use buildings of similar height and depth. If you'd like more information...

Ms. Nogami Streufert: That would be great for public buildings because public buildings sometimes have a different regulation than for commercial buildings.

Mr. Wong: Okay.

Ms. Nogami Streufert: And that was put into place after 9/11.

Mr. Wong: Okay. So I can look into that and get back to you.

Ms. Nogami Streufert: Thank you.

Mr. Dahilig: So, Commissioner, I guess just to clarify, you're referring to the setbacks on Pages 503 and 504 of the PDF?

Ms. Nogami Streufert: I'm not sure.

Mr. Dahilig: I guess right now we're reading...its 5 feet from any right-of-way line for...10 from a side property line...

Ms. Nogami Streufert: Right.

Mr. Dahilig: 10 feet from a...okay.

Ms. Nogami Streufert: Yes.

Mr. Dahilig: And you're wanting this to be aligned with--

Ms. Nogami Streufert: Public buildings in the...for Homeland Security.

Mr. Dahilig: From Homeland Security. Is that information that we can find online?

Ms. Nogami Streufert: I believe so. If you look at many of the buildings that the Federal government had, it had to be either revised or they had to put different kinds of stanchions in front of it for protection. And I'm not assuming that we need it right now, but if we're going to be...if this is going to be a document that will be useful in the future for planning, then the setback should be in there before we have to put something in there.

Mr. Dahilig: Okay. I only suggest because we can probably...if there's other changes that we could incorporate while we're taking the other permit items, we can probably defer this to the end of the agenda and try to pull these items in if that's a suggestion, but--

Ms. Nogami Streufert: Or...I'm not sure that it has to be changed, but I would like to make sure that we are in compliance now before we go into this.

Mr. Dahilig: Okay. So this is called the Homeland Security Guidelines for Federal Buildings?

Ms. Nogami Streufert: I'm not sure what it's called, but there are setbacks for public buildings, and if you don't have the setback, then you have to put stanchions or something on there to prevent people from just driving a car into the area.

Mr. Dahilig: Okay. We'll...let's see if we can research that while the other items are up.

Chair Keawe: Okay. Anything else? I had one, Alex. In the reading material, you had mentioned something about a potential future collaboration between KCC and Island School. There's also the Hawaiian school that's on that area. And something about a college prep. Can you expand a little bit on that?

Mr. Wong: So at last Planning Commission, Commissioner Katayama started to open up the discussion about how Island School would be addressed since it was on the adjacent parcel.

Chair Keawe: Right.

Mr. Wong: Part of the conversation that we've had in the Planning Department in response to that was how would we make this...how would we be able to widen the definition of "University" or "Colleges" to allow for the potential of Island School, which is on the neighboring parcel, to be able to potentially be rezoned as University since it is adjacent to the KCC campus. Although this University zoning district zoning amendment is not specifically for KCC, KCC is the only existing university on this island, currently, and in response, we wanted to keep an open mind in terms of approaching that subject. So what we did in order to allow for Island School to also be considered in rezoning eventually is to change the language of the definition of "University". So if you turn to Page 1 of the draft bill and you look at "University" or "College"—

Mr. Dahilig: And this is Page 501 of the PDF for the...

Chair Keawe: Is it 501?

Mr. Dahilig: 501, yeah.

Chair Keawe: Okay, got it. We're good. Okay.

Mr. Wong: We have made changes to the definition. So it now reads, "'University" or "College" means a nationally-accredited institution of learning that provides full-time or part-time education, whether public or private, including but not limited to community colleges and college-preparatory institutions, providing facilities for teaching, research, and group learning, and authorized to grant academic diplomas and/or degrees." So by changing the language to include "college-preparatory", that would allow for Island School to also be considered for rezoning in the future.

Chair Keawe: But that was specific because of its location.

Mr. Wong: Because of its location.

Chair Keawe: Okay. But my question goes back to—

Mr. Wong: It's a specific example.

Chair Keawe: Is it Kūlia I Ka Pono?

Ms. Ahuna: It's Kawaikini—

Chair Keawe: Kawaikini. Yeah, yeah.

Ms. Ahuna: And Pūnana Leo, so how did that play into effect with this because that was, like, a major concern.

Mr. Dahilig: So just to provide a little bit more context where and why this bill is going forward, we have a Land Use Commission petition that is currently pending before the Land Use

Commission to move this into the Urban district from Agriculture. And when you look at the petition area that KCC is...and Island School is asking for, KCC's area does include the Hawaiian charter schools that are near the stream, so they're asking for their whole campus proper that includes the subleasing areas for the...for those areas to be included in their Urban district. So we would not necessarily look at those schools as being independent and apart from a use standpoint from what the overall campus proper is. We also are keeping that in mind that when you look at the use table, we are looking at, for instance, diversified and specialized agriculture, orchards, and nurseries and related structures. So things like that include things like the lo'i, and so we are keeping those uses in mind.

Ms. Ahuna: But because Pūnana Leo is actually a preschool and then Kawaikini is a charter, and it's not necessarily college-preparatory like in reference to Island School, how does the zoning affect those two (2) schools?

Mr. Dahilig: So we're keeping that in mind, also, by including the phrase "school and day care centers" as an outright permitted use as well.

Ms. Ahuna: Okay.

Chair Keawe: Is that in there?

Mr. Dahilig: That's in there. Under the Use Table, it's... Page 502 of the PDF, and it's under proposed Section 8-2.4(v)(3) where it says "School and day care centers".

Chair Keawe: Oh okay. Got it.

Mr. Dahilig: So we're...you know, we understand...like, for instance, the University of Hawai'i at Mānoa has a laboratory school where some of their academic work is...I shouldn't use the word "tested" but you know, it's tried out on students at that laboratory school, so you know, we want to be as flexible as we can, from an educational standpoint, to provide future functions on the campus, and knowing what's on there, existing, I think that's why we've included that phrase "School and day care centers" as part of that overall genre of outright permitted uses for the campus.

Chair Keawe: So basically, from a practical standpoint, if the school wanted to do something, then they can just go through the permit process because it will be included on the University zoning.

Mr. Dahilig: Exactly.

Chair Keawe: So that's the difference, Kanoe.

Mr. Dahilig: Yeah.

Ms. Ahuna: Okay.

Chair Keawe: Right now they'd have to go through the whole special permit and...you know, use permit.

Ms. Ahuna: Right. So this actually benefits them in that way.

Chair Keawe: Yeah.

Mr. Dahilig: It loosens up the usage over there.

Ms. Nogami Streufert: This is great for right now, but in the future, should there be, like, a distance learning university – like University of Arizona or Phoenix University or something like that – and they decide that they want to come to Kaua'i, but obviously they would not be on the same campus as the KCC but would probably take another building somewhere else.

Chair Keawe: Right.

Ms. Nogami Streufert: Does this have any impact upon them? Or how would that have impact on them?

Mr. Dahilig: I guess what's missing here is that...this is just establishing the zone, but you...

Ms. Nogami Streufert: So this is geography, right now, that we're looking at?

Mr. Dahilig: This is sans geography, so this doesn't have the zoning map amended with the new area colored in as a University zone. So in a situation where you have the University of Phoenix, which is like a distance learning, they typically operate out of...their facilities require, like, office space. And so areas that are General Commercial or Neighborhood Commercial, they can typically operate in those areas without any additional use permits because it's not considered, you know, I guess, a full-service campus. They are just providing the distance education minus the, you know, campus center types of things or the libraries or these types of items. So this wouldn't be meant for them, per se. This really is meant for those brick and mortar institutions that are looking at creating a full-on array of campus uses.

Chair Keawe: Mike, so...I mean, to answer Glenda's question, so if, let's say, a school like that decided to come to Kaua'i, found a piece of land, and they wanted to build a brick and mortar school, then this particular zoning...if that particular zone was authorized in a certain area or...they could actually take advantage of that?

Mr. Dahilig: They would have to petition to the Council first to actually–

Chair Keawe: But because that zone's already set, it's an actual University zone, they could petition for the zoning change.

Mr. Dahilig: Right.

Chair Keawe: Okay.

Mr. Dahilig: Yeah, so because we have the ability to change the maps...this creates the ability to change the maps.

Ms. Nogami Streufert: Okay.

Chair Keawe: Does that answer...Glenda?

Ms. Nogami Streufert: Yes, thank you.

Chair Keawe: Okay.

Ms. Nogami Streufert: Because I'm looking into the future. Because I think what one might want to do, if one wants to grow the youth here and to keep them on the island, is to offer more opportunities. And offering more opportunities can sometimes mean bringing in other educational experiences that may not be here today, but in 10 years or 20 years, we might want to have it. To straightjacket us now with a very specific geography makes it more difficult for other entities to come back in. So thank you for entertaining that.

Chair Keawe: Okay. So where are we now? Alex, do you have a recommendation?

Mr. Wong: Yes, sir.

Mr. Dahilig: I guess before we jump to Alex's recommendation, Mr. Chair, given that there's a couple changes—

Chair Keawe: Do you want to try to address—

Mr. Dahilig: Yeah. Maybe we could ask for a deferral of the item until the end of the agenda. I have staff already taking a look at some of the suggestions concerning the setbacks to see if we can propose more broader language for deeper setbacks than is currently proposed in the proposed law, and then if you can bring that back to the end of the agenda and—

Chair Keawe: Why don't we take a 10-minute break?

Mr. Dahilig: Yeah, we can probably...if you want, or we can move on to the...I don't know how long this is going to take with drafting the amendment, so maybe we could just defer this item and take a break afterwards.

Chair Keawe: Okay.

Mr. Dahilig: And go into the next item afterwards.

Chair Keawe: Okay. Well, let's go ahead and defer it to the end of the agenda, if that's agreeable.

Ms. Ahuna: Second that.

Chair Keawe: Commissioners.

Ms. Ahuna: I second that. Oh, are we taking a...okay.

Chair Keawe: Do we need a motion? Okay. Can I have a motion to defer it to the end of the meeting?

Ms. Ahuna: I'd like to make a motion to defer this item to the end of the meeting.

Mr. Mahoney: Second.

Chair Keawe: Second. It's been moved and seconded. All those in favor? (Unanimous voice vote) Okay, thank you. Motion carries 7:0.

We'll take a quick break for about 10 minutes and then we'll reconvene.

The Commission recessed this portion of the meeting at 9:58 a.m.

The Commission reconvened this portion of the meeting at 10:07 a.m.

Chair Keawe: Okay, we'll reconvene.

## **NEW BUSINESS**

Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 to deviate from the minimum lot size requirement within the Agriculture (A) zoning district, pursuant to Section 8-8-3(b) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the makai side of Kūhiō Highway in Kīlauea, approx. 600 ft. north of the Waiakalua Street/Kūhiō Highway intersection and further identified as Tax Map Key (4) 5-1-005:132, and affecting a total area of 27,450 sq. ft. = *Brian Lansing & David Camp*. [Director's Report received 3/28/17.]

Mr. Dahilig: Thank you, Mr. Chair. We are on Item F.2.a. This is Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 at TMK: (4) 5-1-005 Parcel 132, Brian Lansing and David Camp. We did close the agency hearing on this matter and Chance will be able to provide the report on behalf of the Department, Mr. Chair.

Chair Keawe: Okay. Chance.

Staff Planner Chance Bukoski: Good morning, Chair and Commissioners.

Mr. Bukoski read Summary, Project Data, Project Description and Use, and Additional Findings sections of the Director's Report for the record (on file with the Planning Department).



Mr. Bukoski: And that concludes my staff report. I'll hold off on my evaluation and my recommendation.

Chair Keawe: Okay. Can we hear from the applicant, please?

Maren Arizmendez: Good morning. My name is –

Chair Keawe: Could you pull the mic closer so we can hear you? And your name, please.

Ms. Arizmendez: Good morning. My name is Maren Arizmendez, Esaki Surveying. We're assisting the applicant through this procedure.

Chair Keawe: Okay.

Mr. Lansing: I'm Brian Lansing, one of the owners.

Chair Keawe: Thank you.

Ms. Arizmendez: We did prepare a response to the Director's Report, but there has been an update in this matter. There was a change in staff at DOT and the change...the new personnel has informed Mr. Lansing that they want to renege on their agreement to sell the parcel, so we request deferral of the item for June so that Mr. Lansing has time to sort out this matter with DOT.

Chair Keawe: Okay. Are you referring to the email from Larry Dill?

Ms. Arizmendez: Yes.

Chair Keawe: And I believe the issue on that was the recordation of the property needed to be done within one (1) year with the Bureau of Conveyances, and in reading the material that we had that you had submitted with your application, that recordation was not done until seventeen (17) months later, and I think that's the basis for moving forward. However, you are requesting a deferral?

Ms. Arizmendez: Yes.

Mr. Lansing: I am because I already have obtained an attorney in the matter and the letter...if you read closely, the letter stipulates the period of time to start making payments on it or to purchase it. In the letter, the...Wayne Iwamasa states that...do not act, do not send any money in, do not complete this until we contact you, and we will let you know when to start making the payments. No contact.

Chair Keawe: So the payments were...I'm assuming, I don't know, but the recordation of that sale needed to be done within a year. Is that correct?

Mr. Lansing: Yes, but it couldn't be done because he stipulated in the letter, don't even start until we inform you that it's time to do it.

Chair Keawe: So you have something in writing from the Department saying not to do...

Mr. Lansing: It's in that letter from Larry.

Chair Keawe: Okay.

Mr. Lansing: It's in the letter that Larry Dill sent to you that was from that original agreement about the cost of the property and the parameters of the sale.

Chair Keawe: Okay.

Mr. Lansing: So you should be able to see it right there. It says do not send any—

Chair Keawe: I don't remember seeing it, but that doesn't mean it's not there.

Mr. Lansing: It's in there, but it's just one (1) sentence.

Chair Keawe: Alright.

Mr. Lansing: It says do not complete this, do not go ahead with anything, and we will notify you when to start. Well, they never did, so he never sent anything in. So then we went again to them and basically they said you got to start with the break in access to the highway, so we went ahead and we hired an attorney first and then an engineer second to work with the DOT. And the engineering firm did sight distance studies and all the studies, and they wrote us an approval to break in access contingent on the consolidation.

Chair Keawe: Yeah, because all of it is contingent upon the consolidation. Correct?

Mr. Lansing: In the end, it is. And I noticed that...I got one (1) response from the Planning Department that said can you buy land from the abutting owners to make it a full acre.

Chair Keawe: Right.

Mr. Lansing: Well, the reason I'm asking for the variance is I can't get the land from the abutting owners.

Chair Keawe: Okay.

Mr. Lansing: One is a botanical garden trust with hundreds of acres and it's not coming out of that trust. It's the gardens up there; the (inaudible) property. And the other one is a 50-acre parcel that was bought by a family for their kid who just camps on the property.

Chair Keawe: Okay.

Mr. Lansing: He doesn't want to do anything. He doesn't want to know anybody or do anything. He just wants to camp out there in the jungle.

Chair Keawe: Alright. Commissioners, do you have any questions for the applicant? Basically, what he's trying to do is combine two (2) long, triangular lots, I believe, into a larger one, and he's asking for a variance with regard to building because it's not going to meet some of the codes. And, at this point, are you asking for a deferral?

Mr. Lansing: I'm asking to defer a decision until I clear up with the State whether or not they are bound into an agreement. I mean, they've been working with me up until right now saying yeah, you can have it, you can have it, and then Larry Dill took over and said we want to park heavy equipment there. This Class A, Ag land, organic...it's in an organic farms area. So they want to bring in heavy equipment, fuel the machines, and possibly leak oil and stuff into the surrounding area that's in a subdivision with organic farms and covenants that prevent people from violating the organic farms.

Mr. Dahilig: I guess, Mr. Chair, at base level, what is being asked of is an entitlement to be attached to the land. And if we do not have the permission of the landowner to attach an entitlement to the land – as it appears from the email, that permission is in question – it, essentially, is contrary to our regulations to proceed with such an action because there is not the permission from the landowner to do so. So, again, given the email of April 7<sup>th</sup>, that permission is in question and rather than place the Commission in a position where it could create liability for the County, I would suggest concurring, and we, from a departmental standpoint, would have no objections should the Commission wish to defer this matter out until June to sort out the landownership issues. I think if, at that time, they are unable to show that they have the permission to attach this entitlement to the real property in question, that we probably should...we probably will make a recommendation to reject the application for failure to have the landowners approve of the application to be submitted.

Chair Keawe: Alright. Do you understand, sir, what he said?

Mr. Lansing: Yes.

Chair Keawe: So, the Department is willing to defer until June. We'll have to schedule...Mike.

Mr. Lansing: I just conferred with the attorney and he's in another case right now, but he'll be ready to work on this and he thinks we can have it cleared up by June.

Chair Keawe: Okay.

Mr. Dahilig: I would suggest June 27<sup>th</sup>, Mr. Chair.

Chair Keawe: Okay. June 27<sup>th</sup>. Is that acceptable to you?

Mr. Lansing: Thank you.

Chair Keawe: Okay. I need a motion to defer.

Ms. Nogami Streufert: I move that we defer this action until the June 27<sup>th</sup> meeting.

Chair Keawe: Do I have a second?

Ms. Apisa: Second.

Chair Keawe: It's moved and seconded to defer this action to June 27<sup>th</sup>. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you. Thank you.

Ms. Arizmendez: Thank you.

Mr. Lansing: Thanks very much.

Class IV Zoning Permit Z-IV-2017-7 and Variance Permit V-2017-3 to deviate from the lot length requirement within the Residential (R-4) zoning district, pursuant to Section 8-4.4(a)(3) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the southern side of Kūhiō Highway in Hanamā'ulu Town, approx. 350 ft. west of the Laukona Street/Kūhiō Highway intersection and immediately adjacent to property identified as 4485 Laukona Street/Kūhiō Highway intersection and immediately adjacent to property identified as 4485 Laukona Street, Tax Map Key (4) 3-7-006:097, and affecting a total area of 82,880 sq. ft. = *Neil B. and Desiree A. Fagarang*. [Director's Report received 3/28/17.]

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.2.b. This is Class IV Zoning Permit Z-IV-2017-7 and Variance Permit V-2017-3 at TMK: (4) 3-7-006 Parcel 097. This is, again, the...deviating from the lot length requirement in the Residential district. Neil and Desiree Fagarang are the applicants, and Chance is also at bat on this particular item and will present on behalf of the Department.

Chair Keawe: Mr. Bukoski.

Mr. Bukoski: Hello, again, Chair and Commissioners.

Mr. Bukoski read the Summary, Project Data, Project Description and Use, and Additional Findings sections of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my staff report. I'll hold off on my evaluation and my recommendation.

Chair Keawe: Okay. Is the applicant here? Can we hear from the applicant, please?

Ms. Arizmendez: Good morning. My name is Maren Arizmendez from Esaki Surveying. As stated previously, we are the authorized agent for the owner.

Desiree Fagarang: Desiree Fagarang, one of the owners, and my husband Neil.

Chair Keawe: Okay. Do you want to say anything about the...my understanding is the issue has...there's a floodway that prevents certain issues with regard to what can and can't be built and lot size.

Ms. Arizmendez: Correct. There's also the issue...and the main reason for the lot requirements that it doesn't meet is the original lot is sort of a "C" shape where it's longer on top and bottom then thinner in the middle. So when creating the two (2) new lots, one (1) lot can be created to conform to County standards, but that "C" shape creates an issue for the second lot, and that's the lot that will require the variance.

Chair Keawe: And that's because of the topography?

Ms. Arizmendez: The shape of the lot.

Chair Keawe: Right.

Ms. Arizmendez: Yes.

Chair Keawe: Okay. Any questions for the applicant from the Commissioners? Mr. Ho, anything?

Mr. Ho: I'm good.

Chair Keawe: Alright. Go ahead, Chance.

Ms. Nogami Streufert: Is this to build--

Chair Keawe: Oh, I'm sorry.

Ms. Nogami Streufert: I'm sorry.

Chair Keawe: Commissioner Streufert.

Ms. Nogami Streufert: Is this to have a new building on it? I'm not quite sure I'm understanding.

Ms. Arizmendez: No. There are currently three (3) structures on the lot; no new structures are proposed. This subdivision will only split one (1) structure for one (1) lot and then two (2) structures on the second lot; no new structures. So the use is the same as now, it's just going to be changed from one (1) lot to two (2) lots.

Chair Keawe: So it's a realignment of the original lot designations.

Ms. Arizmendez: Correct.

Ms. Ahuna: Mrs. Fagarang, what is your reason to do this?

Mrs. Fagarang: Well, if you look at the size of the property, it's not like the normal size in the Hanamā'ulu area, so it's mainly to just be easier for us to manage. And, like, trying to get like a refinance on the property, there are no comparable properties in Hanamā'ulu, in Līhu'e. They had to go as far as...I don't know if they went as far as Kīlauea to Kalāheo to try to find something comparable. So I guess it's just...we want to do that just to be able to manage the property better and for, like, our children, you know, will have two (2) properties.

Ms. Ahuna: This is your family's property?

Mrs. Fagarang: Yes.

Ms. Ahuna: Okay.

Mrs. Fagarang: So then we'll have two (2) lots; one (1) lot will have two (2) houses and the other lot will just have one (1) house.

Ms. Ahuna: And you're not looking to build anything more; it's just what is existing. And then your interest is just to support your family in regards to dividing it out.

Mrs. Fagarang: Yes, no new property. And then if you look at the topography of the land and the floodway in between, it's not like a normal, usual property.

Mr. Bukoski: Can I interject as well?

Ms. Ahuna: Yes.

Mr. Bukoski: Just based on the topography and the floodway, yeah, of the property, there's...potential development could, but it would be unfeasible for the owner to spend the money to do development for it just because the steep topography and then also the floodway.

Ms. Ahuna: So it's like an awkward—

Mr. Bukoski: Yes. It's a special circumstance.

Ms. Ahuna: Alright.

Chair Keawe: Any other questions from...Mr. Ho.

Mr. Ho: What you were talking about, Chance, isn't the property too narrow to be...that causeway, isn't it too narrow to be built on?

Mr. Bukoski: Yeah. Possibly...I'm not too sure on the setbacks requirement, if it would for a dwelling, potentially, but just because of the topography and the floodway in the area, it would be very difficult and yet, almost impossible for the applicant to build a dwelling.

Chair Keawe: Okay. Any other questions? Chance, can you read the preliminary evaluation and...?

Mr. Bukoski: Sure.

Mr. Bukoski read part of the Preliminary Evaluation section of the Director's Report for the record (on file with the Planning Department).

Chair Keawe: Okay. Why don't you just go to the recommendation?

Mr. Bukoski: Okay. Sorry.

Mr. Bukoski started to read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: Do you want me to read the conditions, Chair?

Chair Keawe: There's only six (6) of them, so go ahead.

Mr. Bukoski: Okay.

Chair Keawe: There's only six (6), go ahead.

Mr. Bukoski: Okay. (Laughter)

Mr. Bukoski continued reading the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Dahilig: Chance, I think we're good.

Mr. Bukoski: Okay.

Chair Keawe: Okay. Mrs. Fagarang, do you understand the conditions?

Mrs. Fagarang: Yes.

Chair Keawe: Do you agree to abide by them?

Mrs. Fagarang: Yes.

Chair Keawe: Okay. Commissioners.

Mr. Mahoney: Chair, I move to approve Class IV Zoning Permit Z-IV-2017-7 and Variance Permit V-2017-3.

Chair Keawe: Do I have a second?

Ms. Ahuna: I second that.

Chair Keawe: Jump in there, Wade. (Laughter)

Mr. Lord: Next time.

Chair Keawe: (Laughter) Okay. We have a motion and a second. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you.

Ms. Arizmendez: Thank you.

Special Management Area Use Permit SMA(U)-2017-1, Class IV Zoning Permit Z-IV-2017-8, and Use Permit U-2017-6 for construction of a farm dwelling unit and guest cottage within the Seacliff Plantation Subdivision in Kīlauea, involving a parcel situated at the terminus of Pali Moana Place and immediately adjacent to property identified as 4101 Pali Moana Place, Tax Map Key (4) 5-2-004:095, and containing a total area of 5.476 acres = *Nicholas F. Marvin Trust*. [Director's Report received 3/28/17.]

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.2.c. This is Special Management Area Use Permit SMA(U)-2017-1, Class IV Zoning Permit Z-IV-2017-8, and Use Permit U-2017-6 at Tax Map Key (4) 5-2-004 Parcel 095. This is the Nicholas F. Marvin Trust and Jody is our planner. She's a little under the weather, so we'll have to give her a little bit of courtesy on this one.

Staff Planner Jody Galinato: Good morning, Mr. Chair and members of the Commission. Welcome, Commissioner Lord.

This property is located in Seacliff Plantation. It's pretty straightforward.

Ms. Galinato read the Project Description and Use and Additional Findings sections of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: I've attached the agency comments and I'll hold off for the preliminary evaluation and recommendation after testimony.

Chair Keawe: Okay. Is the applicant here?

Laurel Loo: Thank you, Mr. Chairman and Commissioners. Laurel Loo on behalf of the applicant, and with me are the architects for the project, Nathan Teixeira and Conrad Schmidt.

Nathan Teixeira: Good morning.

Chair Keawe: Good morning.

Ms. Loo: So we have nothing to add to this very tasteful project and we're just here to answer your questions.



Chair Keawe: Okay. I had some questions on...back in 1990, was it a different owner that applied? Obviously, that's usually the case.

Ms. Loo: Yeah. The current owner only purchased the property very recently.

Chair Keawe: Very recently meaning?

Ms. Loo: Yes. Within the last year.

Chair Keawe: Last year?

Ms. Loo: Yeah.

Chair Keawe: Okay. Any other questions for the applicant? Now, this is kind of a rendering...a picture drawing of what it would look like, and I remember reading something about...you did kind of a test in putting some poles up or something because the view plain is obviously a big concern where this is. So can you give us a little background on what happened and the feedback from that?

Ms. Loo: Sure. The applicant, Mr. Marvin... Incidentally, the guest house is for his elderly parents and he had to be with his mom today, so he couldn't be here. He is in the construction industry, so he, himself, put up the storey poles. The Planning Department went out to see them. We also invited Kīlauea Neighborhood Association. We also made a presentation in November to the Kīlauea Neighborhood Association and they voted to approve the project. I don't know if you have the letter from them, but I was there for the vote. So I think the Planning Department was able to ascertain, along with Kīlauea Neighborhood Association, that it did not create a visual impact from the town.

Chair Keawe: Okay. This one rendering that we have here on the far left, are those all part of the Ag plan? As far as where the trees are going to go.

Mr. Teixeira: That's incorrect. That's just more of a depiction of...showing some greenery around the structure.

Chair Keawe: Okay. So—

Mr. Teixeira: The Ag plan is included in the application separately.

Chair Keawe: Okay. Any other questions? Questions from the Commissioners, please?

Ms. Nogami Streufert: This land...I'm sorry.

Mr. Lord: Excuse me. What's the overall height of the building?

Mr. Teixeira: The overall height, finish grade, from the point of entry is on...should be in the application that you have. I don't have it before me, but it is well under the 25-foot height

limitation that's, you know, restricted on the north shore. And then the guest house also adheres to that requirement.

Chair Keawe: Commissioner Streufert.

Ms. Nogami Streufert: This lot was approved...or, it's an Agriculture lot. Is that correct? And it was approved for a farm dwelling. Does the guest house fit with that? Does that...?

Mr. Dahilig: There's a farm dwelling and a guest house, so you're entitled to one. So we treat it as density, essentially. So they are entitled, based on the way density is assigned under the code, to have a 500-square foot guest house as an accessory use.

Chair Keawe: Mr. Ho.

Mr. Ho: A guest house has no kitchen?

Mr. Dahilig: No kitchen.

Mr. Ho: No kitchen.

Mr. Dahilig: No kitchen with a size limitation.

Chair Keawe: Okay.

Ms. Ahuna: So this was already presented to Kīlauea Ag and Kīlauea Neighborhood Center [sic]? So, Yosh and them?

Chair Keawe: There were no objections? Okay.

Ms. Loo: That's correct. I was there when they voted to approve the project.

Chair Keawe: Okay. Any other questions?

Mr. Mahoney: Yeah. What is the Ag that's going in there?

Ms. Loo: We submitted an Ag plan with our application as the Department requires, so there will be a fruit orchard planted; 41 trees between...the only area that is relatively flat would be between the main house, the main dwelling, and the guest house. So the entire flat area will be planted with a fruit orchard.

Mr. Mahoney: Thank you.

Chair Keawe: So, just real quick, the entire flat area – if I'm looking at the one on the right-hand side there where the garage is – you're talking right in the front of that? Or is there another part of the parcel that...?

Mr. Teixeira: If you look at the rendering to the left, it's the aerial view.

Chair Keawe: Right.

Mr. Teixeira: That's probably the best depiction of it. You'll see to the right of that there's a lot of trees that are depicted, circular in nature, and to the left it shows the proposed dwelling and the proposed guest house and a connecting driveway, so it's along that driveway.

Chair Keawe: Oh okay. I see it.

Mr. Teixeira: The area that is shown to be plantings on that rendering is the area that the Planner commented is severely sloping.

Chair Keawe: Okay. Any other questions for the applicant? Jody, do you want to read the recommendation?

Ms. Galinato: Sure. Straight to the recommendation or the evaluation?

Chair Keawe: Just go straight to the recommendation. (Laughter)

Ms. Galinato: Thank you.

Chair Keawe: We want to get you out of here.

Ms. Galinato: Okay.

Ms. Galinato started to read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: I can read those if you'd like. Okay. Yes?

Chair Keawe: Yes.

Ms. Galinato: Okay.

Chair Keawe: Real quick.

Ms. Galinato: Sure.

Ms. Galinato read Condition Nos. 1 through 9 of the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Chair Keawe: Just finish up with No. 10, Jody, and that's good. (Laughter in background) Sorry.

Ms. Galinato: I'm sorry. (Laughter in background) Thank you.

Ms. Galinato read Condition No. 10 of the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: And then there are other standard conditions for the remaining five (5), compliance with the Use Permit for the existing subdivision, and that's all I have.

Chair Keawe: Okay. Good. Has the applicant read and agree to these conditions?

Ms. Loo: Yes.

Chair Keawe: Okay. Alright. Commissioners, are we ready for a decision?

Ms. Apisa: I would move that we take the Planning Department's recommendation and approve with the fifteen (15) conditions.

Chair Keawe: Okay. Do I have a second?

Mr. Lord: I second that motion.

Chair Keawe: It's been moved and seconded. Any discussion? (None) If not, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 7:0. Thank you. Thank you.

Ms. Galinato: Thank you.

### **UNFINISHED BUSINESS (For Action) (Continued)**

Mr. Dahilig: Thank you, Mr. Chair. We'll go back to the University zone item. I'm circulating, I guess, an amended...proposed amended standard based off of Commissioner Streufert's comments. I guess the difficulty in being able to distill the standards...when my staff looked at it, it's actually a very thick book. So the...you know, rather than trying to distill specific elements from the book given there's an array of buildings and use types that could be built on the property, and I will say it is...you know, trying to actually work through that and find okay, which standard would apply, I think would probably be a little bit more problematic for us just to kind of select and put a specific standard down. So what we did is...under Section 8-29.2(b), what we did is add an additional Paragraph 4, so this would be...if you turn to Page 504 of the PDF again. This would be slipped in right before Paragraph C and it would state, "Notwithstanding the setback requirements listed under 8-29.2(b)(1) through (3),—" and so the reason why we're doing that is so that at least there's a baseline.

Chair Keawe: Yeah.

Mr. Dahilig: There's a baseline. "—the setback standards for any public facility within the University zoning district shall conform to the setback standards established under the Interagency Security Committee Security Design Criteria for new Federal office buildings and

major modernization projects.” So that way, you know, there can be a discussion concerning applicability of which buildings need to be setback, etc. So we would incorporate that into our recommended amendments and recommend approval of the zoning amendment, Mr. Chair.

Chair Keawe: Commissioner Streufert, good?

Ms. Nogami Streufert: I think that’s fine as long as “public facility” may mean any building within that facility to include, like, dormitories. I’m not sure dormitories are considered to be public facilities.

Mr. Dahilig: Well, they would be. If they’re built by the university, then—

Ms. Nogami Streufert: Alright.

Mr. Dahilig: Yeah.

Chair Keawe: Okay.

Mr. Lord: Chair?

Chair Keawe: Commissioner Lord.

Mr. Lord: I’d like to disclose that I’m on the Board of Directors for Island School.

Chair Keawe: Okay.

Mr. Lord: And just wanted to (inaudible).

Chair Keawe: Do you feel that...no, go ahead, Jodi.

Mr. Lord: I just wanted to make that known to the body.

Ms. Higuchi Sayegusa: Are you able to separate the roles and make a decision in this scenario independently?

Mr. Lord: I am, yes.

Chair Keawe: Okay. Alright. Before us we have the changes, so this would be a motion to approve subject to the one (1) change that we have for Section 8-29.2(b)(4). Do we have a motion?

Mr. Mahoney: Chair, I would like to make a motion to approve Zoning Amendment ZA-2017-4 with the amendments as stated.

Chair Keawe: Okay. Do we have a second?

Ms. Apisa: Second.

Chair Keawe: It's been moved and seconded. Is there any discussion? (None) If not, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0. Thank you.

Mr. Dahilig: Thank you, Mr. Chair.

Chair Keawe: Thank you, Alex.

Mr. Wong: Mahalo.

## **ANNOUNCEMENTS**

### **Topics for Future Meetings**

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, April 25, 2017.

Mr. Dahilig: Those are all the action items that we have set to present before the Commission today. I have circulated the batting sheets for the upcoming meetings. You'll notice that things are kind of coming through. We do have matters set into June and just as a reminder, we do have a regularly scheduled meeting next...the next meeting is on the 25<sup>th</sup>, but we are doing the one (1) meeting concerning the General Plan on the 27<sup>th</sup>, which is a Thursday. It'll be in this room at 12:30 p.m.

Chair Keawe: Is it 12:30?

Mr. Dahilig: At 12:30. So that will be in this room. We're not able to secure the room because Salary (Commission) has the room from 9:00 to 11:00, and rather than dragging the Commission during the lunch hour, we figured let's just start a little after an early lunch hour.

Chair Keawe: And the 27<sup>th</sup>?

Mr. Dahilig: 27<sup>th</sup> at 12:30 p.m. So that is a General Plan...that will be specifically just for the General Plan item.

Chair Keawe: Okay.

Mr. Dahilig: Okay. Other than that, Mr. Chair, that's all the announcements we have.

Chair Keawe: Okay. Anything else to come before the Commission at this time?

## **ADJOURNMENT**

Chair Keawe: I'll entertain a motion to adjourn.

Ms. Nogami Streufert: I move to adjourn.

Chair Keawe: Second?

Ms. Apisa: Second.

Chair Keawe: Moved and seconded. Thank you.

Chair Keawe adjourned the meeting at 10:55 a.m.

Respectfully submitted by:



---

Darcie Agaran,  
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval)

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.